

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

CSC HOLDINGS, INC. d/b/a CABLEVISION¹

Employer

and

Case No. 29-RC-10285

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 1049, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Peter Pepper, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. The parties stipulated that the Employer, CSC Holdings, Inc. d/b/a Cablevision, also doing business as CSC-Long Island, CSC-Hauppauge, and Cable of Brookhaven, is a Delaware corporation, with its principal office and place of business located at 1111 Steward Avenue, Bethpage, New York. The Employer provides broadband cable and communications services to communities in Nassau and Suffolk

¹ The name of the Employer appears as amended at the hearing.

Counties, in the State of New York. During the past calendar year, in the course and conduct of its operations generally, the Employer has derived gross revenues in excess of \$500,000, and has purchased and received goods, products and materials valued in excess of \$5,000, directly from points outside the State of New York.

Based on the stipulation of the parties and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. International Brotherhood of Electrical Workers, Local 1049, AFL-CIO, herein called the Petitioner or the Union, seeks to represent a unit of all full-time and regular part-time field service technicians, remote replenishment operations persons in the Field Service Department, outside plant technicians, construction technicians, network fiber technicians, audit technicians and inside plant technicians, employed at the Employer's Nassau and Suffolk County, Long Island, New York, facilities, located at 1111 Steward Avenue, Bethpage, 11-12 Industrial Road, Port Jefferson Station, 4 Main Street, Amagansett, 1600 Motor Parkway, Hauppauge, 660 Jericho Turnpike, Huntington, 254 Old Country Road, Riverhead, 1144 Route 109, Lindenhurst, 160 Sunrise Highway, Freeport, 111 New South Road, Hicksville, 150 Cross Ways West,

Woodbury, but excluding all other employees, switch technicians, designers, office clericals, guards and supervisors as defined in Section 2(11) of the Act.²

Positions of the Parties

The Employer takes the position that the petitioned-for unit is inappropriate, and that the smallest appropriate unit encompassing the unit sought would have to also include the Employer's dispatchers, secretaries, coordinators and Logistics Department employees. The Logistics Department employees sought to be included by the Employer encompass both the warehouse employees at the Bethpage warehouse and the remote replenishment employees at the various field locations.

The Union takes the position that the petitioned-for unit is appropriate but that it is willing to proceed in an alternative unit, if the petitioned-for unit is deemed inappropriate by the Board. The petitioned-for unit includes five remote replenishment operations persons in the Field Service Department.

The parties stipulated to the following exclusions from the bargaining unit: confidential employees, Technical Support Group employees, temporary warehouse employees supplied by temporary agencies, and the following supervisory positions in both Nassau and Suffolk counties: Directors of Operations, Area Operations Managers, Field Service Supervisors, Outside Plant Managers, Outside Plant Supervisors, Audit Supervisors, Construction Managers, Construction Supervisors, Network Fiber Director, Network Fiber Manager, Network Fiber Supervisor, Inside Plant Area Director, Inside Plant Supervisors, Trainers in the Human Resources Department, Manager of the Distribution Center, Warehouse Manager and Manager of Remote Replenishment.

² The petitioned-for unit appears as amended at the hearing.

The parties stipulated that the following job titles³ within the petitioned-for job classifications should be included in the bargaining unit:

Field Service Technicians (about 500)

Grade 10 Associate Telecommunications Technician - Multi-Product	(92)
Grade 12 Technician I - Telecommunications Multi-Product	(229)
Grade 12 Remote Replenishment Operations Senior	(5)
Grade 14 Senior Technician - Telecommunications Multi-Product	(145)
Grade 14 Quality Control Multi-Product Technician	(2)
Grade 14 Tech Property Damage ⁴	(2)
Grade 15 Advanced Technician Telecommunications Multi-Product	(42)

Outside Plant Technicians (about 70-80)

Grade 12 Technician I Outside Plant	(0)
Grade 14 Technician II Outside Plant	(21)
Grade 15 Senior Technician Outside Plant	(44)
Grade 16 Advanced Technician Outside Plant	(12)

Construction Technicians (about 30)

Grade 11 Construction Technician	(2)
Grade 12 Construction Technician II	(4)

³ The numbers in parentheses indicate how many employees in these job classifications were employed in Nassau and Suffolk Counties as of November 2, 2004, according to a spreadsheet prepared by the Employer.

⁴ The parties did not specifically stipulate to the inclusion of “Tech Property Damage” employees, and they appear to be the only technicians for whom the Employer’s official job descriptions were not supplied. However, the parties agreed that field technicians, generally, should be included in the unit, and there is no evidence indicating that “Tech Property Damage” employees should not be included. In *Cablevision Systems Development Company*, 251 NLRB 1319 (1980), property damage employees were employees who repaired damage to customers’ premises resulting from installation work. They were included in a unit of technicians at that time.

Grade 13 Construction Technician Senior (7)

Grade 14 Advanced Construction Technician (4)

Grade 15 Construction Crew Chief (13)

Network Fiber Technicians (5)

Grade 14 Fiber Tech (0)

Grade 15 Senior Fiber Tech (0)

Grade 16 Advanced Fiber Tech (5)

Audit Technicians (6)

Grade 10 Associate Field Security Telecommunications Technician (0)
(also referred to as Audit Technician Associate, Grade 10)

Grade 12 Field Security Telecommunications Technician (4)
(also referred to as Audit Technician, Grade 12)

Grade 14 Senior Field Security Telecommunications Technician (2)
(also referred to as Audit Technician Senior, Grade 14)

Headend / Inside Plant (“ISP”) Technicians (20)

Grade 10 Headend Technician Associate (1)

Grade 12 Headend Technician I (0)

Grade 14 Headend Technician Senior (14)

Grade 15 Headend Advanced Technician (5)

Witnesses

The Employer’s witnesses were Anthony Locascio, Vice President of Field Operations for Suffolk County, Peter O’Dell, Director of Construction, and Andrew Heeren, Vice President of Logistics Operations. The Union’s witnesses were John Fernandez, a Grade 14 Field Service Technician Senior at the Riverhead facility, Leonard Costa, a Grade 12 Field Service Technician in Hauppauge, and Brian Fox, a Grade 15

Construction Crew Chief in Hicksville. None of the disputed Logistics employees, dispatchers, secretaries or coordinators testified at the hearing.

FACTS

OVERVIEW OF OPERATIONS

The record reflects that the Employer is in the business of providing three types of communications services: cable television, high speed Optimum On-Line (an Internet service), and Voice-Over IP (“VOIP”), a telephone service that travels over the Internet. Locascio testified that the Employer is organized into two overall functional areas that bring these three communications services to customers: Field Operations and Network Management. The departments within Network Management include Head End or Inside Plant (“ISP”), Construction, Design and Network Fiber. The departments within Field Operations are Field Services, Outside Plant (“OSP”), Dispatch, Security Audit and Human Resources. Neither party seeks to include Design or Human Resources.⁵ All technicians in the petitioned-for unit are assigned to the ISP, Construction, Network Fiber, Field Service, OSP and Security departments. In addition, each technician is assigned to a particular geographical location. Of the 10 facilities in Long Island, comprising the “Long Island System,” there are eight facilities, referred to as “field locations,” where unit employees are assigned. The Employer’s organizational structure encompasses six geographical “Regions.”⁶ The Long Island System encompasses the Nassau and Suffolk regions.

⁵ The Human Resource Department handles hiring, training and the maintenance of personnel records.

⁶ The record reflects that the Employer, or a related company, has additional facilities in New York City and Westchester county, New York, and in New Jersey, Connecticut and a portion of Pennsylvania.

Apart from Field Operations and Network Management, there is also a separate organizational chart for the Regional Distribution Center in Bethpage, New York, also referred to as the Logistics Department, which is subdivided into Warehouse and Remote Replenishment. None of the technicians in the petitioned-for unit works in Bethpage, and none is assigned to the Logistics Department.

JOB DESCRIPTIONS

Headend / Inside Plant (“ISP”) Technicians

Locascio testified that the headend or ISP technicians maintain the headends and hub sites. The headends are physical facilities where satellite and antenna signals are captured, combined into a single fiber optic cable, and encoded to avoid theft, before traveling through the Employer’s distribution system. The hub sites are where the signals are amplified.

Outside Plant (“OSP”) Technicians

The OSP technicians maintain the Employer’s distribution system from the headends and hub sites to the nodes, and from the nodes to the taps. Locascio explained that the nodes are where signals are converted to an accessible, “RF” format that a TV can receive, and that the taps are the connection points between the cable plant and customers’ homes.

The job functions of the OSP technicians include following cable lines and looking for cable leaks, repairing the leaks, recording and reporting them. They fix system problems, perform federally required testing, report and repair outages, and maintain fiber optic cables.

Field Services Technicians

The final portion of the Employer's distribution system, extending from the taps to the customers' homes, is the responsibility of the field services technicians. The taps are located on poles, in underground vaults, or inside apartment complexes.

The field services technicians perform installations and disconnects in customers' homes. In addition, they handle trouble-shooting calls, respond to customer complaints, and perform quality control checks with regard to the work performed by outside contractors.

Remote Replenishment Operations Persons in Field Services Department

Locascio testified that the remote replenishment operations employees in the Field Service Department keep the field service technicians supplied with the equipment and materials they need to do their work. At the beginning of the work day, if a technician does not have enough equipment or materials to perform his job, he has a "face to face" interaction with the remote replenishment person, who obtains the equipment from a remote replenishment cage, or locker, and has the technician sign for it.

The job duties of remote replenishment employees in the Logistics Department, which overlap with those of remote replenishment employees in the Field Service Department, are described on pages 9 to 10 below.

Audit Technicians

The audit technicians protect the Employer's signal from theft by performing audits. This entails looking for unauthorized connections and reconnections, disconnecting them, and reporting the information to the secretary/coordinators for eventual legal action.⁷

⁷ In *Cablevision, supra*, the job descriptions of the audit technicians were similar, but also included investigating whether other Cablevision employees were responsible for the unlawful installations or

Construction Technicians

O'Dell testified that the construction technicians install and construct the Employer's distribution network. This includes underground and aerial work, installing cable lines for the distribution system and performing maintenance on telephone poles.

Network Fiber Technicians

O'Dell stated that the Network Fiber technicians design, plan, splice and test fibers.

Logistics Department

The record reflects that the Logistics Department includes approximately 40 to 50⁸ warehouse employees who work in the distribution center in Bethpage, approximately 25 remote replenishment employees who work at various field locations, and about four Logistics employees who divide their time between performing warehouse work in Bethpage in the morning, and remote replenishment work in a field office in the afternoon.

Logistics Department employees in the warehouse and those performing remote replenishment work at the field locations are in the same grades and have the same job titles: Logistics Operations Associate, Logistics Operations Associate Senior, Logistics Operations Person and Logistics Operations Person Senior.⁹

connections. This aspect of their jobs gave rise to an inherent conflict of interest, resulting in their exclusion from the bargaining unit. *Cablevision*, 251 NLRB at 1324. In the instant case, however, there is no evidence of any conflict of interest between audit technicians and other employees.

⁸ The testimony regarding the number of employees in Logistics varied somewhat from the numbers set forth in the documents supplied by the Employer.

⁹ The Logistics Department also includes one driver, three "Tech Bench Assoc" and two "Tech Bench Sr." The record is not clear as to what these employees do, or whether the Employer seeks to include them in the unit.

Remote Replenishment Employees in the Logistics Department

Heeren testified that the equipment and materials used by technicians is transported in sealed containers from the distribution center in Bethpage to the various field locations by outside trucking firms, who leave these sealed containers in the logistics staging cage at each facility. The logistics operations employees assigned to the field locations then unseal and unpack the containers, and distribute the materials and equipment among the tackle boxes and cages, or lockers, at each site. These cages include individual, overflow and bulk cages, which are used to supply technicians in the Field Service, Construction, Outside Plant and Fiber departments.

The field service technicians' individual cages contain digital cable converters and cable modems, which have to be replaced as the technicians use them. At the end of their shifts, the technicians leave written material request forms in their cages for the logistics operations employees, who later replenish the items as requested on the forms. Similarly, the technicians leave forms in their cages for the logistics operations employees regarding returned equipment, such as converter boxes removed from customers' homes. Subsequently, logistics operations employees read the serial numbers on the returned items into the Cabledata system and put the returned equipment into sealed containers, which they then place inside the logistics staging cages at the various facilities.

Logistics employees also replenish the field technicians' tackle boxes, which contain the hardware necessary for performing installation work. When the tackle boxes need to be replenished, the field technicians take the tackle boxes out of their vans, where they are usually kept, and place them in their lockers. To alert the logistics employees

that their tackle boxes need replenishing, the technicians leave a pipe cleaner on their lockers as a signal, or leave a note in their lockers.

The record reflects that there is only minimal contact between the technicians and the logistics operations employees.

Warehouse Employees in the Logistics Department

Heeren testified that Logistics employees in the Bethpage warehouse work side by side with temporary workers employed by temporary agencies.¹⁰ According to Heeren, they “do shipping, receiving, what we call pick-pack, put away, consumer device, or, the asset control handling of the materials coming back.” When a technician at a field location submits a material request form to his supervisor, the supervisor scans it into the computer and e-mails the form to the warehouse. There, Logistics employees fill the order and put the material into a sealed container before it is trucked to the field location by outside trucking firms.

Heeren testified that some warehouse employees “have occasion” to drive vans, and sometimes make deliveries to the field locations, where they “could have” contacts with field personnel. Conversely, he maintained that two or three times per day, technicians go to the warehouse to pick up material.

Fox testified that he would go to the warehouse in Bethpage if he needed equipment in an emergency, but that this would only happen very rarely. Fernandez asserted that he has never been to the warehouse.

Dispatchers

¹⁰ The parties stipulated that these temporary workers are not employees.

The dispatchers for the Employer's Long Island System work at the Hauppauge facility (one of the eight Long Island locations where employees in the petitioned-for unit are assigned) and the Woodbury facility (where there are no unit employees). Although there is no evidence of any face-to-face contact between dispatchers and technicians, Locascio estimated that a typical field service technician averages about four telephone contacts with dispatchers per day, averaging five minutes per contact (for a total of 20 minutes per day). For example, a field service technician would contact a dispatcher if he needs information from customer account records, if he needs assistance from other technicians on an assignment, if a customer is not home, or regarding a "non-pay save," in which a customer faced with a possible disconnect agrees to pay his bill. In certain types of cases, a field service technician would contact Dispatch when he closes out a job. A dispatcher would contact a field service technician if there is a "must do trouble call," such as a request to restore a customer's service, or to correct a problem that the technician failed to fix successfully earlier. The dispatchers also issue "safety pages" to the technicians, regarding severe weather.

In addition, audit technicians contact the dispatchers if they discover unauthorized connections, and construction technicians contact Dispatch regarding temporary outages. The record does not reveal the frequency of the telephone contacts between the dispatchers and technicians in departments other than Field Service.

The dispatchers' job duties also include data entry work, and "pre-calling" certain types of customers the night before their scheduled appointments. During the "pre-call," the dispatcher provides step-by-step instructions to the customer, in an attempt

to avoid the necessity of sending a truck to the customer's home. According to Locascio, about 15% of these attempts are successful.

Finally, in conjunction with the technicians' supervisors and the Customer Service, Sales, and Telemarketing departments, the dispatchers are involved in the formulation of technicians' daily routes. However, the Employer's witnesses and those called by the Union provided conflicting testimony regarding the extent of this involvement. No documentation was provided which could potentially resolve this conflicting testimony.

Secretary/Coordinators

Locascio testified that secretaries and coordinators (referred to in the Employer's official job descriptions as "clerical coordinators") perform essentially the same functions, providing clerical support for the Field Services, OSP, Audit and Construction departments. They perform routine clerical and administrative tasks such as answering telephone calls, filing, filling out forms, posting notices on bulletin boards, typing hand-written information into the Employer's computerized databases, and generating and maintaining various reports. The report-generating function involves inputting information supplied to the secretary/coordinators by supervisors, managers and technicians. These reports include completed daily work reports, productivity reports, outage reports and quality control reports. The latter contain supervisors' quality control write-ups on individual technicians.

Locascio repeatedly stressed that when inputting information into the reports, the secretary/coordinators occasionally contact the technicians regarding hand-written information, submitted by the technicians, which may be illegible, incorrect or

ambiguous. In addition, the secretary/coordinators notify the Grade 14 field technicians when there is a customer complaint to which they must respond. In Long Island, this occurs about twice per day.

According to Locascio, the secretary/coordinators complete the paperwork for ordering uniforms, Nextel telephones, tools and office supplies, and sometimes give these items to the technicians in person. Occasionally, the secretary/coordinators are approached directly by the technicians regarding the need for a new or repaired cell phone. However, the Union's witnesses testified that they have little or no contact with the secretary/coordinators. Rather, they order tools, uniforms and cell phones through their supervisors.

Locascio testified that there are occasional communications between the technicians and the secretary/coordinators regarding overtime, vacations, time records and the reimbursement of out-of-pocket expenses. The secretary/coordinators process some of the paperwork involved in these administrative functions, and perform related data entry tasks. However, the Employer is in the process of converting to e-time, whereby increasing numbers of technicians are entering their own information regarding hours worked, with their supervisors' approval, into the Employer's computerized system. With regard to vacation scheduling, Costa and Fox testified that they only communicate with their supervisors, not with the secretaries or coordinators, and that the vacation calendars are posted in supervisors' and managers' offices.

Within the Construction Department, according to Locascio, the two secretary/coordinators coordinate meetings, maintain and distribute a weekly standby rotation list, notify technicians about overtime opportunities, and contact technicians in

the field regarding emergency telephone calls. However, construction crew chief Fox testified that he has minimal contact with the secretary/coordinators.

SUPERVISION

The record reflects that the employees in the petitioned-for bargaining unit are separately supervised:

<u>Job Classification</u>		<u>Department</u>	<u>Immediate Supervisor</u>
Field Service Technicians)	Field Service	Field Service Supervisors
Remote Replenishment)	“ “	“ “ “
Operations Persons)		
Outside Plant Technicians		Outside Plant	Outside Plant Supervisors
Inside Plant Technicians		Inside Plant	Inside Plant Supervisors
Construction Technicians		Cable & Communications ("C & C") Construction	Construction Supervisors
Audit Technicians		Audit	Audit Supervisor (1)
Network Fiber Technicians		Fiber	Fiber Supervisors
Logistics Operations Persons (Warehouse and Remote Replenishment)		Logistics	Logistics Operations Supervisors
Dispatchers		Dispatch	Dispatch Supervisors
Secretary/Coordinators		Various	Department Heads Department Managers Vice Presidents, Directors

WORK LOCATION

The record reflects that the technicians in the petitioned-for bargaining unit are assigned to eight out of 10 of the Employer's Long Island facilities. The technicians

report to these facilities at the beginning and end of their shifts, to obtain or drop off their work assignments, equipment and trucks, but spend most of their time in the field.

By contrast, the dispatchers and secretary/coordinators are confined to their desks, at their respective facilities. The dispatchers work at just two of the Employer's Long Island locations, Woodbury (a location where no unit employees are assigned) and Hauppauge. The secretary/coordinators work at all Long Island facilities except Amagansett.

Most of the Logistics Department employees work at the warehouse in Bethpage, the second Long Island location to which no unit employees are assigned. However, Logistics Department employees who perform remote replenishment work are assigned to the same facilities as the technicians.

QUALIFICATIONS

According to the Employer's official job descriptions, all employees must have high school diplomas, or the equivalent. Entry-level field technicians (Grade 10) must have at least one year of Cable FST/telecommunications experience, knowledge of communications/CATV aerial wiring, electronics, PCs and operating systems, telephone installation and service, the ability to learn how to use a 28-foot ladder and lift 75 pounds, the ability to climb utility poles, to use hand tools and operate all tools and equipment safely, a driver's license, the ability to work in all weather conditions and at various heights, written and oral communications skills, and problem solving and conflict resolution skills. At above the Grade 10 level, two years of college, technical schooling, or the equivalent, are preferred. Increasingly advanced levels of technical knowledge are

required at the higher grades. The requirements for technicians in other departments are similar.

By contrast, entry-level dispatchers must have an understanding of Excel and Word, written and oral communications skills, analytical, problem-solving, and conflict resolution skills, listening skills and patience, and various other personality traits such as the ability to sit for long periods of time. In addition, dispatchers above the entry-level are required to be able to handle customer service calls when necessary. Dispatchers at Grade 11 and above must also have dispatching experience, and “proficiency in all products offered by Cablevision.”

The official job descriptions for the Secretary I and II positions require that they have secretarial and Microsoft Office experience, oral and written communication skills, the ability to interact with all levels of management, organizational skills, and the ability to maintain confidentiality. The job descriptions for clerical coordinators are similar; those above entry level must also have the ability to perform mathematical calculations, and in the case of the Senior Clerical Coordinators, proficient knowledge of Cabledata and Oracle.

The official job descriptions for Logistics Operations persons require that they have driver’s licenses, the ability to “lift and manipulate a variety of shaped items that weigh a minimum of 60 pounds,” to use hand tools, warehouse forklifts, hand-trucks and electric jacks, to read, write and perform mathematical calculations, and to use Oracle inventory control software and Cabledata billing software. At the most advanced level, Grade 12 Logistics Operations Person Senior, they must also have the ability to use Excel and Word, strong written and oral communications and leadership skills, the ability to

“interface and communicate effectively within the Logistics group and with other Cablevision functional groups,” and three years of experience as Logistics Operations persons (or equivalent experience).

The requirements for Grade 12 Remote Replenishment Operations Person Senior employees in the Field Service Department are nearly identical to those for Grade 12 Logistics Operations Person Senior employees in the Logistics Department, except that as employees in the Field Service Department, they must “interface and communicate effectively within the Field Service group.”

MATERIALS, TOOLS, EQUIPMENT AND VEHICLES

The record reflects that computers, Nextel cell phones and stationery are the only materials, tools or equipment used by the Employer’s secretary/coordinators and dispatchers. Logistic employees, and the five remote replenishment employees in the Field Services Department, also use computers and cell phones, as well as hand trucks and bar code readers. In addition, Logistics employees in the warehouse use warehouse forklifts and electric jacks.

By contrast, the equipment and tools used by the technicians include cable converter boxes, modems, ladders, field strength meters, amp clamps, tick tracers, cable cutters and crimpers, hammers, screw drivers, wrenches, fire extinguishers, safety cones and glare signs for nighttime work. Construction technicians also use underground cable, underground machines such as diggers, loading conduit (similar to PVC pipe), strand (metal wire strung from pole to pole that holds cable aloft), drills, lashes, slack locks, chain hoists, bolt cutters and ropes. The technicians also use Nextel cell phones.

In addition, the field technicians drive trucks and vans, and the construction technicians drive bucket trucks. This requires the latter to have Class “B” CDL licenses, with air brakes endorsements. The construction technicians also use harnesses to secure themselves inside the buckets, and wheel chocks to block the tires.

TRAINING

The record reflects that the Employer provides new field service technicians with six weeks of classroom training, which covers basic installation and troubleshooting, tools, safety, skills and techniques. They receive an additional two weeks of hands-on training, during which they accompany more experienced technicians in the field. Other technicians are also provided with on-the-job and classroom training, including an insulation course for construction technicians.

Locascio testified that dispatchers are also given field and classroom training. This includes training on new products and troubleshooting. In addition, dispatchers spend one day per year in the field, with the field service technicians. The duration of dispatchers’ classroom training was not disclosed.

As for the secretary/coordinators, they receive on-the-job and some classroom training in the use of software programs such as Oracle and Cabledata. In addition, secretary/coordinators in the Construction Department are trained to use a computerized engineering tracking system, and the OSP secretary/coordinators are given classes on preparing reports required by the government. The Field Services and OSP secretary/coordinators are also given some form of training on how to complete work orders, enabling them to enter the information contained on the work orders into the

Employer's computer system. The technicians are also trained on the completion of work orders.

Heeren testified that Logistics employees in the warehouse, and those who perform remote replenishment work, are trained in Cabledata and Oracle software, bar code scanner guns, the use and disbursement of materials, and associated forms.

TEMPORARY INTERCHANGE

There is only minimal evidence of any temporary interchange between employees in the petitioned-for unit and non-unit employees. Although Locascio testified that secretary/coordinators and dispatchers occasionally receive temporary assignments to Field Services Department positions, he did not disclose whether these temporary assignments involve bargaining unit work. Fox and Fernandez did not know of any such temporary transfers, and there is nothing in the Employer's official job descriptions for secretaries, coordinators, dispatchers or Logistics people that requires them to fill in for technicians.

Conversely, Locascio asserted that field services technicians assist in the Dispatch Department, primarily on pre-call work. At different points in his testimony, Locascio maintained that this assistance by technicians occurs either in "some cases," when the work load is high, or "every day." He did not provide the names of any field service technicians who had ever performed such dispatch work. Although the Employer provided voluminous documentation regarding telephone calls by dispatchers, the record contains no documentation of any calls by technicians filling in for dispatchers. There is nothing in the job descriptions of technicians that involves filling in for other employees.

The Employer also provided evidence regarding temporary interchange among non-unit employees. Locascio testified that on occasion, when the volume of work is high, the secretary/coordinators in the Field Service Department help the Dispatch Department by telephoning customers to verify their appointments. In addition, the Employer's official job descriptions state that dispatchers above the entry-level are required to be able to handle customer service calls when necessary. Finally, Heeren testified that within the Logistics Department, warehouse employees sometimes substitute for replenishment employees who are on vacation, or out sick. By contrast, significantly, there is no evidence that replenishment employees in the Logistics Department and replenishment employees in the Field Services Department ever fill in for one another.

PERMANENT TRANSFERS

Heeren testified that the five remote replenishment employees who are currently in the Field Service department were transferred there from the Logistics department a year ago, when the remote replenishment position in the Field Services department was first created. In addition, Heeren testified that on an unspecified date or dates, unnamed Field Service and Construction employees transferred into the Logistics Department, and unnamed Logistics employees transferred into the Field Services, Construction, ISP and OSP departments. He did not disclose the job titles of any of the individuals who transferred, other than the five remote replenishment employees. He estimated that ten employees have transferred into the Logistics Department within the last two or three years.

Locascio recalled the name of one dispatcher who transferred into the Field Service Department within the past three years, and the names of six field service technicians who transferred into either the ISP, OSP, Construction or Dispatch departments during that same general time frame. Thus, it appears from his testimony that Locascio did not know whether these six technicians transferred within the petitioned-for unit (into the ISP, OSP or Construction departments) or outside the unit (into the Dispatch Department). No documentation was provided regarding permanent transfers.

WAGES

Grades

The record disclosed that each job title falls within a particular “grade.” Generally speaking, a higher grade means a higher wage rate, and a higher level of skill and responsibility. The Employer’s witnesses emphasized that the highest, lowest and median wage rates for each grade are the same. However, there is no record evidence pertaining to the actual wage ranges corresponding to the various grades. Moreover, Locascio acknowledged that within each grade, there is a wide gap between the highest and lowest rates of pay. Thus, where employees in different job classifications fall within the same grade, it is impossible to determine, on this record, whether their rates of pay are the same.

A chart prepared by the Employer reflects that the grade levels for employees in the petitioned-for unit tend to be higher than those in the classifications the Employer seeks to add to the unit. With the exception of one ISP technician, the technicians in the ISP, OSP and Network Fiber departments are in grades 14 through 16. The Audit

Department technicians are in grades 12 and 14. More than 400 technicians in the Field Service Department (over 80%), including the five individuals performing remote replenishment work, are in grades 12 through 15. By contrast, most employees in the Logistics Department (including remote replenishment workers) are in grades 8 through 10. Most secretary/coordinators are at the grade 11 level. Among the dispatchers, 28 are in grades 9 through 11, 43 are in grade 12, and the twelve lead dispatchers are in grade 13.

Overtime, Standby and Incentive Pay

The record does not reveal how much overtime work is performed by employees in the various job classifications at issue. To the extent that they work overtime, all non-exempt employees are paid time and a half after forty hours, and double time on the seventh day worked.

Further, the record reflects that field technicians receive monetary incentives for non-pay saves, when they convince customers who are in arrears to pay their bills. In addition, technicians available after hours to respond to emergencies receive standby pay. Logistics employees receive standby pay for special projects, but it is not scheduled every week, and secretary/coordinators and dispatchers are not paid standby pay.

The Employer's official job descriptions reflect that secretaries and coordinators, unlike the technicians in the petitioned-for unit, are eligible for year-end bonuses.

WORK SCHEDULES

Official Job Descriptions

The official job descriptions for technicians and Logistics Department employees state that they must have the ability to work flexible hours, including evenings,

weekends, holidays and overtime as required. The job descriptions for secretaries and coordinators state that they must be flexible to work overtime on short notice, but there is no mention of evening, weekend or holiday work. Conversely, the official job descriptions for dispatchers omit any overtime requirement, but mandate the flexibility to work evenings, weekends and holidays.

The testimony regarding the hours worked by employees in the petitioned-for unit, and in the disputed classifications, is set forth below:

Field Service and Outside Plant Technicians

Leonard Costa, a field service technician in Hauppauge, testified that he works a four-day, 10-hour per day schedule, from 7:30 a.m. to 6:00 p.m.¹¹ on Sunday, Monday, Thursdays and Fridays. John Fernandez, a field service technician in Riverhead, stated that he works Tuesdays through Saturdays, eight hours per day, from 7:30 a.m. to 4:00 p.m.

According to Fernandez, new hires work Friday through Monday, 10 hours per day. Fernandez stated that there is another five-day shift from Sunday through Thursday, and a 10-hour late shift.

The Employer did not provide specific information regarding the starting times, ending times, or days of the week worked by outside plant or field service technicians, other than the testimony of Heeren, who maintained that “in some cases,” technicians “are returning to the shop” at 8:00 p.m., thus “overlapping” with Logistics employees who perform remote replenishment work. In addition, he believed that some field technicians begin their work at 6:00 a.m., which is the end of the night shift for Logistics employees who perform remote replenishment work. As further described below, the

¹¹ The hours worked by technicians apparently include a half-hour lunch break.

next shift for Logistics employees who perform remote replenishment work begins at 11:30 a.m., with a gap between 6:00 a.m. and 11:30 a.m.

Locascio testified that field service technicians and outside plant technicians work 40 hours a week, and that there is coverage seven days per week on “different shifts.” He did not differentiate between the hours worked by remote replenishment employees in the Field Service Department from the hours worked by other field service technicians.

Construction Technicians

Brian Fox, a crew chief in the Construction Department in Hicksville, testified that his shift is from 7:00 a.m. until 3:30 p.m. Similarly, O’Dell indicated that construction technicians work Monday through Friday, 40 hours per week, either from 7:00 a.m. to 3:30 p.m. or from 7:30 a.m. until 4:00 p.m.

Inside Plant Technicians

O’Dell testified that inside plant technicians work 40 hours per week, with coverage seven days per week, either 18 hours per day or 24 hours per day. Heeren testified that both inside plant technicians and field service technicians work four days per week, 10 hours per day.¹² There is no record evidence regarding the specific hours worked by inside plant technicians.

Audit Technicians

Locascio testified that audit technicians work from 7:00 a.m. until 3:30 p.m., Monday through Friday.

Fiber Technicians

There is no record evidence regarding the hours worked by fiber technicians.

¹² This testimony is in conflict with the testimony of field service technician Fernandez, who maintained that he works eight hours a day.

Secretary/Coordinators

Locascio testified that secretaries and coordinators work “multiple shifts,” 40 hours a week. When asked whether the starting times for their shifts are “the same as technicians in the various departments you testified to,” he said, “Yes,” without providing specific information regarding their starting times, ending times or days worked.

Logistics Department – Warehouse Employees

Heeren testified that warehouse employees work 40 hours per week. There are three day shifts: from 7:00 a.m. until 3:30 p.m., from 8:00 a.m. until 4:30 p.m., and from 9:00 to 5:30 p.m. The warehouse employees work five days a week, with some working Monday through Friday and others working from Tuesday through Saturday.

Logistics Department – Remote Replenishment Employees

Heeren indicated that Logistics employees who perform remote replenishment work either work four days, 10 hours a day, or five days, 8 hours a day, for a total of 40 hours per week. Initially, he testified that their shifts are from 11:30 a.m. to 9:30 p.m., 3:30 p.m. to 12:30 a.m., and from 8:00 p.m. to 6:00 a.m. He later stated that he “misspoke on the 3:30. I think it’s 12:30 p.m. shift that goes to 8:30...p.m.” Thus, the record reveals that Logistics employees performing remote replenishment work have shifts that are half an hour shorter than those of the petitioned-for technicians, as well as the warehouse employees.

The “Remote Replenishment” side of the organizational chart for the Regional Distribution Center indicates that there are 27 “RR nights” employees, six “RR days, Pick, Shipping” employees, and an unknown number of “RR/QC nights” employees in the Logistics Department.

Dispatchers

There is no record testimony regarding the hours worked by the dispatchers.

WORKING CONDITIONS AND BENEFITS

According to Locascio, benefits such as time off with pay, leaves of absence, a 401(K) plan, an employee assistance program, cable TV and Internet benefits, medical, dental and life insurance, are provided on an equal basis to all employees. New employees all fill out the same application forms and are subject to the same 90-day probationary period, and all employees learn about promotional opportunities through the Employer's intranet site. Locascio testified repeatedly that all employees receive the same employee handbook and abide by the same rules of conduct, EEO and attendance policies. The employee handbook, written benefits information, rules and policies were not produced at the hearing.

Locascio testified that all employees at the Employer's Nassau and Suffolk facilities have common parking areas, mailboxes, bathrooms, conference rooms, break rooms, training rooms and ready rooms. Ready rooms are areas where the technicians meet in the morning to discuss and write out their work for the day before going out into the field, where they do not have access to the Employer's facilities.

SAFETY GEAR

The employees in the petitioned-for unit wear safety gear such as hard hats, safety glasses, safety vests, safety boots, hot gloves and regular work gloves, rain gear, and "a body belt for strapping off on the pole."

Logistics employees performing both warehouse and replenishment functions wear safety boots and leather protective gloves, but do not use the hot gloves worn by

the technicians. In addition, Logistics employees in the warehouse wear hard hats. There is no evidence that dispatchers, coordinators or secretaries wear safety gear.

UNIFORMS

The record reveals that technicians and Logistics Department employees, including the transportation coordinator in the warehouse, wear uniforms. Heeren testified that the five remote replenishment employees in the Field Services Department wear the same uniforms as Logistics employees, but he did not disclose whether other technicians wear the same uniforms as Logistics employees. Fox testified that the uniforms worn by the construction technicians consist of jeans and gray shirts with the Optimum logo. It appears that dispatchers, secretaries and coordinators do not wear uniforms.

MEETINGS

The record reflects that the technicians in the petitioned-for unit regularly attend two types of meetings. Safety meetings on ladder handling, safety equipment and the safe use of electricity are only attended by technicians. Meetings involving employee benefits, procedures, and general information about the company are attended by all employees. In addition, “certain [unspecified] clerical people” are required to attend driver safety classes with the field services technicians.

DISCUSSION

It is well-established that “there is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be ‘appropriate.’”¹³ *Morand*

¹³ Thus, the cases cited by the Employer herein, involving dispatchers and clericals whose inclusion in the unit was desired by petitioning unions, are inapposite.

Brothers Beverage Co., 91 NLRB 409, 418 (1950)(emphasis in original), *enf'd on other grounds*, 190 F.2d 576 (7th Cir. 1951). Accordingly, in making unit determinations, “the Board first considers the union’s petition and whether that unit is appropriate.” *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). If it is “not appropriate, the Board may examine the alternative units suggested by the parties, and also has discretion to select an appropriate unit that is different from the alternative proposals of the parties. The Board generally attempts to select a unit that is the ‘smallest appropriate unit’ encompassing the petitioned-for classifications.” *Overnite Transportation Company*, 331 NLRB No. 85 (2000).

The criteria applied by the Board in making unit determinations include “distinctions in skills and functions of particular employee groups, their separate supervision, the employer’s organizational structure and differences in wages and hours, as well as integration of operations, and employee transfers, interchange and contacts.” *Atlanta Hilton and Towers*, 273 NLRB 87, 90 (1984); *see also Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). Additional relevant factors include fringe benefits and other working conditions, work location, degree of centralized control over the employer’s day-to-day operations and personnel policies, and previous bargaining history (or lack thereof) at the Employer. *See J.C. Penney Company, Inc.*, 328 NLRB 766 (1999); *Transerv Systems, Inc.*, 311 NLRB 766 (1993); *Allied Gear and Machine Company, Inc.*, 250 NLRB 679 (1980).

By weighing these various factors, the Board determines whether the employees in the proposed unit “share a sufficiently distinct community of interest from other employees as to warrant a separate unit,” *Transerv*, 311 NLRB at 766, or conversely,

whether other employees share such a strong community of interest with the employees in the proposed unit that their inclusion in the unit is required. *J.C. Penney*, 328 NLRB at 766. In accordance with this test, the Board in *Cablevision Systems Development Company*, 251 NLRB 1319 (1980), *enforcement granted*, 671 F.2d 737 (2d Cir. 1980), *cert. denied*, 459 U.S. 906 (1982), found appropriate a unit of technicians, similar to the petitioned-for unit, without the inclusion of the dispatchers, warehouse and clerical employees. *Cablevision*, 251 NLRB at 1323-1324; *see also Deposit Telephone Company, Inc.*, 328 NLRB 1029, 1031 (1999)(Board found appropriate a unit of customer service technicians and maintenance employees, who spent “substantial portions of their time in the field, performing work that is technical in nature”); *Audiovox Communications Corp.*, 323 NLRB 647 (1997)(unit of cellular phone technicians held appropriate, in light of superior technical training and skills, separate work area and supervision); *Harron Communications, Inc.*, 308 NLRB 62 (1992)(Board found appropriate a unit of cable television technicians and installers, one cable converter repairperson, and one warehouse employee).

In the instant case, the technicians in the petitioned-for unit are in separate departments, and are separately supervised. There is minimal evidence of temporary or permanent interchange with the Employer’s dispatchers, secretary/coordinators, or Logistics employees. Moreover, the technicians’ pay grades are generally higher than those of the dispatchers, secretary/coordinators or Logistics employees. The technicians’ higher pay is commensurate with a correspondingly higher level of technical skill, as reflected in the Employer’s preference that field service technicians have at least two

years of college or technical school. They are required to have telecommunications experience and a knowledge of electronics, and use electrical and cable equipment.

Whereas the secretary/coordinators, dispatchers and Logistics employees work indoors, most technicians work outside “in all weather conditions,” and have to climb utility poles and use ladders. Thus, their working conditions differ from those of employees in the disputed classifications. Moreover, since most of the petitioned-for technicians work in the field, away from the facilities to which they are assigned, there is minimal “face-to-face” contact with non-unit employees. Although the technicians have access to the conference rooms, bathrooms and break rooms at their respective locations, the record does not reveal how often they actually use these facilities.

Further, most Logistics employees, and a substantial number of dispatchers, work in facilities where no technicians are assigned. Conversely, there are no dispatchers in seven out of eight of the facilities where technicians report. In light of the incomplete testimony regarding shifts and hours worked, the extent to which any secretary/coordinators, dispatchers, or Logistics employees are present when the technicians report to their facilities, at the beginning and end of their shifts, is unclear on this record.

Dispatchers

In *Cablevision, supra*, the Board excluded dispatchers from the unit because they did “not wear uniforms, [did] not, except on rare occasions, go into the field, ha[d] no contact with the technicians other than by telephone or radio, nor work[ed] with tools as d[id] the technicians.” *Cablevision*, 251 NLRB at 1323. The Board also excluded the customer service representatives (“CSRs”), who, like the dispatchers in the instant case,

attempted to solve customers' problems over the telephone and thereby avoid the necessity for a technician to make a service call at the customer's home. The Board reasoned, "The fact that the telephone service rep is trained to ask the caller a series of prepared questions, such as whether his set is hooked to the cable, does not align these employees with the service techs who are field employees, physically capable of climbing telephone poles and, beyond that, work with the tools of the trade."

Cablevision, 251 NLRB at 1323; see also *Harron Communications, Inc.*, 308 NLRB 62 (1992).

In the instant case, similarly, the dispatchers do not wear uniforms or use safety equipment, rarely go into the field, and have no contact with the technicians other than by cell phone. These contacts average only about 20 minutes per day. The dispatchers are not as technically accomplished or as highly paid, on average, as the technicians, and they are not eligible for standby pay or non-pay save incentives. Unlike the technicians, the dispatchers' job descriptions contain no overtime requirement. There is minimal evidence of permanent or temporary interchange between the two groups of employees. As with the CSRs in *Cablevision*, the dispatchers' attempts to solve customers' problems over the telephone "does not align these employees with the service techs who are field employees, physically capable of climbing telephone poles and, beyond that, work with the tools of the trade." *Cablevision*, 251 NLRB at 1323. Accordingly, and because of their separate supervision, separate departmental affiliation, and the absence of dispatchers at most facilities to which technicians are assigned, I find that the dispatchers do not "share such a strong community of interest with the employees in the proposed unit that their inclusion in the unit is required." *J.C. Penney*, 328 NLRB at 766.

Logistics Department employees

In *Cablevision, supra*, the Board excluded the warehouse employees from a unit of technicians, because they did not go into the field. Rather, they were responsible for dispensing material and storing equipment, spending most of their time organizing and dispensing materials to installers, technicians and construction employees. The Board found that the unit would “clearly” be appropriate without their inclusion. *Cablevision*, 251 NLRB at 1324.

The job descriptions of Logistics employees in the instant case are similar to those of the warehouse employees in *Cablevision, supra*, and they do not work in the field. The pay grades of most Logistics employees are substantially lower than those of employees in the petitioned-for unit, and they lack the technical skills of unit employees. Unlike the field technicians, the Logistics employees are not eligible for non-pay save incentives, and they do not regularly work on a standby basis. Most Logistics employees work in the warehouse, apart from the technicians but “side-by-side” with temporary employees from temporary agencies. The Logistics employees are separately supervised, in a separate department from those of the technicians.

The Employer emphasizes that the five Field Service Department employees who perform remote replenishment work have job duties similar to those of the Logistics employees performing remote replenishment work. Indeed, these five individuals were originally employed in the Logistics Department, and transferred to the Field Service Department a year ago. Since that time, however, there is minimal evidence of temporary or permanent interchange. Although the Logistics employees in the warehouse and the Logistics employees performing remote replenishment work fill in for

one another during vacations and other absences, there is no comparable evidence of interchange between the remote replenishment employees in the Field Service Department and any of the Logistics employees. Moreover, although the Logistics Department employees performing remote replenishment work are assigned to the same field locations to which field technicians are assigned, there is little evidence of “face-to-face” contact. Rather, the technicians communicate with the Logistics employees by leaving pipe cleaners on their lockers, as a signal, and by leaving notes and forms inside their lockers. By contrast, the Employer’s witnesses acknowledged that the Field Service employees performing remote replenishment work have face-to-face contacts with the technicians.

Based on the foregoing, I find that the Employer has failed to establish that the Logistics employees have such a strong community of interest with unit employees that their inclusion in the unit is required.” *J.C. Penney*, 328 NLRB at 766.

Secretary/Coordinators

The Employer argues that the secretaries and coordinators must be included in the petitioned-for bargaining unit because they are plant clericals. However, the Employer does not cite any case in which the inclusion of plant clericals in a unit consisting primarily of field technicians is required. Moreover, in *Palagonia Bakery*, 339 NLRB No. 74, slip op. (2003), the Board explained the difference between office clericals and plant clericals as follows:

Clericals whose principal functions and duties relate to the general office operations and are performed within the office itself are office clericals who do not have a close community of interest with a production unit. A key element in determining whether a community of interest exists is whether the asserted plant clericals ‘perform functions closely allied to the production process or to the daily operations of the production facilities at which they work...the crucial element in

finding such an alliance with the production process, is significant contact with production employees. Thus, in cases where employees were found to be plant clericals, the Board consistently relies upon the presence of significant direct contact with production employees in finding functional integration with the production process and a sufficient community of interest. On the other hand, where the Board finds employees not to be plant clericals, it consistently relies heavily on the absence of evidence of substantial contact with production employees to conclude that the asserted plant clericals do not share a community of interest with production employees and or are office clerical employees.

339 NLRB No. 74, slip op. at 41-42 (internal citations omitted). Generally, “plant clericals spend most of their working time in the plant production area.” *Desert Palace d/b/a Caesars Tahoe*, 337 NLRB 1096, 1098 (2002); see *J. Ray McDermott & Co., Inc.*, 240 NLRB 864, 869 (1979).

In *Cablevision*, *supra*, the Board excluded a service department clerical from a unit of technicians. *Cablevision*, 251 NLRB at 1324. This individual produced daily production records and kept time sheets for the service technicians, who would verify them and return them to her. Because she “perform[ed] routine clerical duties, [did] not work in the field, or in any manner use tools,” she was held to be an office clerical and excluded from the bargaining unit. *Cablevision*, 251 NLRB at 1324. Similarly, the Board excluded installation clerks who maintained production records and communicated occasionally by radio with the installers, because they did not work in the field and had no contact with other installers, other than routine telephone or radio communications. *Cablevision*, 251 NLRB at 1324.

In the instant case, similarly, the secretary/coordinators perform routine clerical duties, and do not work in the field, use tools or have a technical background. They do not wear uniforms or safety gear, and they do not have weekend or evening shifts. There is minimal evidence of interchange or contacts between the technicians and the

secretary/coordinators, who are generally in lower pay grades than the technicians.

Moreover, the secretary/coordinators report directly to members of management, and are eligible for bonuses at the end of the year. Accordingly, I find that the secretary/coordinators do not share a community of interest with the technicians.

Based on the foregoing discussion and findings, I have concluded that the employees in the petitioned-for bargaining unit share a sufficiently distinct community of interest from other employees as to warrant a separate unit. *Transerv*, 311 NLRB at 766. Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a)(1) of the Act:

All full-time and regular part-time employees in the following job classifications and job titles: **FIELD SERVICE TECHNICIANS**, including Grade 10 Associate Telecommunications Technician - Multi-Product, Grade 12 Technician I - Telecommunications Multi-Product, Grade 12 Remote Replenishment Operations Senior, Grade 14 Senior Technician - Telecommunications Multi-Product, Grade 14 Quality Control Multi-Product Technician, Grade 14 Technician - Property Damage, and Grade 15 Advanced Technician Telecommunications Multi-Product, **OUTSIDE PLANT TECHNICIANS**, including Grade 12 Technician I Outside Plant, Grade 14 Technician II Outside Plant, Grade 15 Senior Technician Outside Plant, and Grade 16 Advanced Technician Outside Plant, **CONSTRUCTION TECHNICIANS**, including Grade 11 Construction Technician, Grade 12 Construction Technician II, Grade 13 Construction Technician Senior, Grade 14 Advanced Construction Technician, and Grade 15 Construction Crew Chief, **NETWORK FIBER TECHNICIANS**, including Grade 14 Fiber Tech, Grade 15 Senior Fiber Tech, and Grade 16 Advanced Fiber Tech, **AUDIT TECHNICIANS**, including Grade 10 Associate Field Security Telecommunications Technician (also referred to as Audit Technician Associate, Grade 10), Grade 12 Field Security Telecommunications Technician (also referred to as Audit Technician, Grade 12), and Grade 14 Senior Field Security Telecommunications Technician (also referred to as Audit Technician Senior, Grade 14), **HEADEND / INSIDE PLANT ("ISP") TECHNICIANS**, including Grade 10 Headend Technician Associate, Grade 12 Headend Technician, Grade 14 Headend Technician Senior, and Grade 15 Headend Advanced Technician, employed at the Employer's Nassau and Suffolk County, Long Island, New York, facilities, located at¹⁴ 11-12

¹⁴ The record indicates that there are currently no unit employees assigned to the Employer's 1111 Steward Avenue, Bethpage, New York, or 150 Cross Ways West, Woodbury, New York, locations.

Industrial Road, Port Jefferson Station, 4 Main Street, Amagansett, 1600 Motor Parkway, Hauppauge, 660 Jericho Turnpike, Huntington, 254 Old Country Road, Riverhead, 1144 Route 109, Lindenhurst, 160 Sunrise Highway, Freeport, 111 New South Road, Hicksville, but excluding all other employees, dispatchers, secretaries, coordinators, Logistics Department employees who work in the warehouse, Logistics Department employees who perform remote replenishment work, switch technicians, designers, Technical Support Group employees, warehouse employees supplied by temporary agencies and other temporary employees, confidential employees,¹⁵ office clericals, guards and supervisors as defined in Section 2(11) of the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not

¹⁵ The parties stipulated that secretary/coordinators Linda Lalla, Tina Murphy, Randy Monteforte, Laura Fromm, Joan Rindfuss, Danielle Ryan, Sian Sutherland, Kim Kirsch, Regina D'Agostino, and Gail Farrell, are confidential employees.

been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Electrical Workers, Local 1049, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor, Brooklyn, New York 11201 on or before **December 27, 2004**. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB No. 52 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **January 3, 2004**. The request may be filed by electronic transmission through the Board's web site at NLRB.Gov but **not** by facsimile.

Dated: December 20, 2004, Brooklyn, New York.

Alvin P. Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201